STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:	)	Docket No. 03-SPPE-01
	)	
Small Power Plant Exemption for the Modesto	)	
Irrigation District Electric Generation Station	)	
(MEGS)	)	

APPLICANT'S POST-HEARING OPENING BRIEF

Joy A. Warren
Senior Staff Attorney
Modesto Irrigation District
1231 Eleventh Street
P. O. Box 4060
Modesto, CA 95352
(209) 526-7389
joyw@mid.org

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Small Power Plant Exemption for the Modesto Irrigation District Electric Generation Station (MEGS)

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I. INTRODUCTION

In accordance with section 25541 of the California Public Resources Code, and Article 5 of Chapter 5 (commencing with section 1934) of Title 20 of the California Code of Regulations, Modesto Irrigation District ("MID") seeks a Small Power Plant Exemption ("SPPE") from the Power Facility and Site Certification provisions (Chapter 6 of Division 15) of the Public Resources Code for its proposed Modesto Irrigation District Electric Generation Station ("MEGS") to be located in Ripon, California. MID is a California irrigation district, existing and operating pursuant to Division 11 (commencing with section 20500) of the Water Code. As an irrigation district, MID is a public agency governed by a popularly-elected Board of Directors. (Record Transcript of September 2, 2003 Evidentiary Hearing (9/2 RT), p. 13, lines 5-10) MID provides retail electric service to over 100,000 residential, commercial, industrial and agricultural customers throughout its electric service area.[1]

As a publicly owned electric utility, MID is "owned" by and must answer to its ratepayers who elect its Board of Directors. (9/2 RT, p. 18, lines 10-13) MID seeks to be the preferred utility for its existing and potential customers. It has consistently maintained some of the lowest electric rates in the State of California.

II. PROJECT DESCRIPTION

MID proposes to construct a nominal 95-megawatt (MW) net output simple-cycle power plant in an industrial area near MID's existing Stockton Substation located in the City of Ripon ("Ripon") in San Joaquin County, California. MID will develop, build, own and operate the facility. The so-called MEGS plant will consist of two General Electric LM6000 SPRINT Combustion Turbine Generators. The plant equipment and design are described in MID's SPPE

[1] MID's electric service area is set forth in Public Utilities Code section 9610. Pursuant to section 9610, subdivision b, MID shares approximately 400 square miles of electric service territory with PG&E. The shared service territory includes the City of Ripon and surrounding area. MID competes with PG&E for customers in this area.

Application and Supplement A thereto (Exhibits 1 and 2), and in MID's prepared testimony. (Exhibit 25, pp. 46-48)

MID desires to obtain a reliable, flexible internal generation resource capable of providing peaking and load following capability as well as temporary base load output. (9/2 RT, p. 20, lines 21-25) MID has assessed its existing internal, contractural, and other power resources. Its base load needs are currently met mainly through a combination of internal generation from its Woodland Generating Station plants, imported generation sources, and long-term power contracts. However, because MID's peak load fluctuates over the course of the year, MID has a need for a flexible, load-following resource. On July 9, 2002, MID's Board of Directors identified the two combustion turbine generators operated in simple-cycle as its preferred alternative for meeting MID's needs. (9/2 RT, p.13, lines 12-15, MID Resolution No. 2002-97, a copy of which is included as Attachment A to this Brief) In order to ensure the new plant's ability to serve MID's internal needs, as well as the potential needs of the State of California, the Board directed that the plant be permitted for 8760 hours of annual operation for maximum operating flexibility. (9/2 RT,p. 148, lines 7-17; p. 150, lines 6-9) Notwithstanding the 8760 permitting flexibility, MID anticipates that it will primarily operate MEGS as a peaking facility to serve MID's native load and only beyond that as an additional resource in the event the State needs energy or other MID resources became unavailable. (9/2 RT, p. 17, lines 2-8)

III. PROCEDURAL HISTORY

MID filed its Application for SPPE with the State Energy Resources Conservation and Development Commission (the "Commission") on April 21, 2003. Public Resources Code section 25541 authorizes the Commission to exempt "thermal powerplants with a generating capacity of up to 100 megawatts" from the Commission's site certification requirements if the Commission finds "that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility." (Pub. Resources Code § 25541) To make such findings the Commission will perform an environmental assessment of the "project." In doing so, the Commission acts as the lead agency in a process satisfying the requirements of the California Environmental Quality Act ("CEQA"). (Pub. Resources Code § 25519, subd. (c))

As lead agency, the Commission notified interested parties and encouraged them to participate in the Commission's review process. The Commission also transmitted copies of the Application to all federal, state and local agencies having an interest in the matter, and solicited comments regarding the project and the Commission's analysis of it. (20 Cal.Code Regs. § 1940; Exhibit 22, pp. i-ii) The Commission Staff prepared and circulated a Draft Initial Study for the Project, and, ultimately after public hearings and workshops, a Final Initial Study with a proposed Negative Declaration. (Exhibit 22) Staff concluded in its Final Initial Study that, with the implementation of all Conditions of Exemption as recommended therein, the MEGS project would not result in any significant impacts to the environment. (*Id*. at p. iv) MID offered suggested revisions to proffered Conditions of Exemption in the areas of noise and air quality. The outstanding noise issues were resolved by Errata filed by CEC Staff on August 29, 2003. (Exhibit 26) As discussed below, MID and Commission Staff appear to have resolved their remaining disagreement regarding air quality conditions of exemption.

During this licensing process Robert Sarvey, an individual and resident of Tracy, California, petitioned to intervene in MID's proceeding. MID objected to Mr. Sarvey's petition arguing that the petition failed to state any grounds for intervening in the proceeding. The Commission granted the Petition, noting that it certainly could have concluded that "Petitioner failed to meet the requirements set forth in Section 1207 of our regulations" but instead "construed the Petition in the manner most favorable to Petitioner…because of the public nature of our proceedings, the desire to include all concerned citizens, and the Commission's long established policy of encouraging public participation." MID renews its objections to Mr. Sarvey's participation as an intervenor in this action and incorporates its opposition to Mr. Sarvey's petition herein.

A hearing on the MEGS project was held on September 2, 2003. MID and Staff presented testimony. Intervenor Sarvey cross-examined MID and Staff witnesses. Two local residents living near the project site offered public comment regarding the project.

Staff noted that both CEQA and the Commission regulations require certain notice periods prior to the Commission's final action on the Application. Staff recommends that a proposed negative declaration, including the Staff's Final Initial Study, be prepared and distributed through the State Clearinghouse to all responsible state agencies. Staff also recommends that a Notice of Intent to adopt a mitigated negative declaration be posted, followed at least 10 days later by a proposed decision on MID's SPPE Application. This would be

followed 20 days later by a full Commission hearing and decision. (9/2 RT, p. 28, line 1 through p. 29, line 9) MID does not concede that CEQA's State Clearinghouse procedures apply in this instance and notes that responsible agencies have already been provided the opportunity to comment on the Initial Study. Furthermore, the Final Initial Study, including a proposed negative declaration, has been made available for public review. However, MID does not oppose Staff's recommendations for compliance. MID asks that any review procedures be consolidated in the most expeditious manner possible so as to not unduly delay the Commission's consideration of MID's SPPE Application.

IV. STANDARD OF REVIEW

Both parties have previously provided briefs addressing the appropriate standard of review to apply in this proceeding. MID believes that the standard applied under Public Resources Code section 25541 differs from the "fair argument" standard applied in connection with CEQA proceedings adopting negative declarations. The standard of review is not determinative to this proceeding, however, because no substantial evidence of any unmitigated impact has been presented.

The evidence presented must be reviewed in light of the record as a whole to determine whether "substantial evidence" of a potential impact has been presented. "Substantial evidence" for purposes of CEQA "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to or are not caused by, physical impacts on the environment." (Pub. Resources Code § 21080, subds. (e)(1) and (e)(2); see also, *id.*, § 21082.2, subd. (c)) Fears and desires of project opponents do not qualify as substantial evidence. Neither do unsubstantiated opinions, concerns, suspicions, speculation or conjecture about a project's potential impacts amount to "substantial evidence". (Pub. Resources Code § 21082.2, subd. (c); Perley v. Board of Supervisors (1982) 137 Cal. App. 3d, 424, 436) Public controversy in the absence of substantial evidence that the project may have a significant effect on the environment does not preclude the adoption of a negative declaration. (Pub. Resources Code § 21082.2 subd. (b))

Both Staff and MID presented witnesses to testify, by declaration or in person, regarding the potential impacts resulting to the environment from the proposed MEGS project. All witness agreed that, based on the investigation conducted in their respective fields of expertise, the project would result in no significant unmitigated impact to the environment. This testimony was not challenged by Intervenor Sarvey's cross-examinations. Intervenor Sarvey presented no evidence on the relevant issues. Two local residents provided public comment regarding their concerns over the project's potential visual, noise and air impacts and relayed their discomfort with relying on Ripon to enforce the proposed mitigating Conditions of Exemption in these areas. These comments, while identifying heart-felt concerns of the residents, did not constitute substantial evidence in light of the clear, scientific evidence presented by Staff and MID witnesses that the potential impacts in these areas were sufficiently mitigated.[2]

V. ADEQUACY OF PROJECT REVIEW

CEQA requires a review of a project's potential environmental impacts. MID has defined the project to encompass permitting for 8760 hours of operation a year. The SPPE Application for the MEGS project specified such operation in several locations. Specifically, Table 2-2 on page 2-3 of Section 2.0, Project Description, of the SPPE provides the expected performance of the project and lists the operating hours as "up to 8760." Thus, a reasonable analysis of the project would involve review of the impacts the project may have operating as a peaking plant with the ability to operate as a base load plant when needed. All affected environmental topic areas were reviewed in this manner.

In addition, due to Air District permitting requirements, the air analysis of the project's potential air quality impacts is based on 8760 hours of operation. For example, Table 8.1-18 – Maximum Facility Fuel Use contains a footnote stating that the fuel use provided is based upon 8760 hours per year at maximum fire rate. In addition, the text on page 8.1-26 clearly states that the project's maximum emissions are based upon maximum output for 8760 hours per year.

The MEGS Project Health Risk Assessment (HRA) confirms that there will be no significant adverse local air quality impacts associated with the MEGS Project. The results of the HRA show that the health risk is not significant at any location, at any time, under any operating

[2]The sufficiency of some mitigation is dependent on the enforcement of the mitigation measures. And, while the residents did relate some antidotal basis for concerns in this area, Staff and MID witnesses distinguished the situations related by the residents from the MEGS project. This distinction is discussed more fully below.

conditions. (9/2 RT 269-270). The public health impacts associated with the project are not in dispute with CEC Staff. (Exhibit 1, Section 8.7-4)

Furthermore, the water balances provided both in the Project Description section of the SPPE Application, and summarized in the Water Resources section, are based upon operations of 8760 hours per year. This was recognized by the Commission Water Resources Staff in the Final Initial Study (FIS). Specifically, on page 9-11 of the FIS, in response to a question from the San Joaquin County Public Works Department, the Staff states, "The MEGS project is designed to be a peaking facility, to be used on an as-needed basis; however, the project is seeking a license to operate up to 8760 hours per year." Energy Resources issues are addressed in Section VII.B of this Brief.

A. Staff's Proposed Conditions of Exemption will be Adequately Monitored

Staff believes that should the Commission decide to exempt the MEGS project from site certification requirements, the project would, after completion of construction (with the exception of the few areas the Commission has legislative reporting requirements[3]), be removed from the Commission's jurisdiction to the jurisdiction of local permitting agencies. Specifically, for example, Ripon would be responsible for ongoing compliance with visual and noise conditions and the San Joaquin Valley Unified Air Pollution Control District (Air District) would be responsible for compliance with the air quality conditions. (9/2 RT, p. 36, lines 10-25, p. 44, lines 14-24) Questions have been raised during these proceedings regarding the sufficiency of such oversight.

Measures for mitigation must be fully enforceable through permit conditions, agreements or other measures. Public Resources Code section 21081.6 requires that reporting or monitoring programs for Conditions of Exemption be adopted to ensure compliance during project implementation. The Commission may delegate this reporting or monitoring responsibility to another public agency that accepts the delegation. (Title 14, Cal. Code Regs., § 15097, subd. (a)) The Commission will ensure that all Conditions of Exemption are incorporated into the project. Thereafter, the Air District or the City of Ripon will take on such responsibilities.

The Air District will issue an Authority to Construct and a Permit to Operate for the project through which process it will enforce its regulations. In the event MEGS is out of compliance with applicable requirements, the Air District's enforcement procedures would be

[3] 9/2 RT, p. 46, lines 3-9.

followed, starting with a notice of violation and potentially resulting in an order of abatement. (9/2 RT, p. 374, lines 2-20)

Likewise, Ripon will issue a site plan permit through its major site plan review procedures. (Ripon City Ordinances, Chapter 16.72, a copy of which is included as Attachment B to this Brief) Ripon has provided a letter to the Commission describing its Site Plan Review process and how a permit will be issued for the MEGS project pursuant to such process. The City also provides in its letter a description of its enforcement procedures. A copy of this letter is attached as Attachment C to this Brief. This letter was docketed with the Commission on October 1, 2003.

VI. SUMMARY OF ENVIRONMENTAL REVIEW

A. Fourteen Topic Areas Submitted by Declaration

Staff and MID submitted testimony on the following 14 topic areas by declaration. The topic areas are: Biological Resources, Socioeconomics, Traffic and Transportation, Transmission Line Safety and Nuisance, Worker Safety, Compliance and General Conditions, Cultural Resources, Paleontology/Geology, Hazardous Materials, Hydrology and Water Quality, Land Use, Public Health, Transmission System Engineering, and Waste Management. Neither intervenor nor the public provided any comment or question regarding these topic areas.[4] The parties agree that in each area, the analysis performed evidences no unmitigated environmental impact from the project. [5]

B. Energy Resources

On August 29, 2003, Staff issued an errata to its Energy Resources testimony contained in the Final Initial Study (FIS). The revised Energy Resources analysis evaluates MID's anticipated operations for the project - the project operating at base load for three months of the year; the remainder of the year it would operate as a peaking plant. (Exhibit 26; Transcript of May 16, 2003 Informational Hearing (5/16 RT pp.37 and 38)). Staff concludes that the project,

[4] In response to MID's Hazardous Materials testimony, Intervenor Sarvey questioned MID's intent to comply with San Joaquin County Office of Emergency Services Business Plan submittal requirements. Mr. Sarvey requested the addition of a new Condition of Exemption requiring such compliance. MID objected to such a Condition because it is statutorily exempt from such filings, which are accompanied by significant fees. Instead, MID has agreed as part of the project that it will prepare and provide to the County relevant safety and emergency response plans. (9/2 RT, p.68, line 24 through p. 71, line 6. Mr. Sarvey withdrew his objection. (9/12 RT, p. 71, lines 10-12)

[5] Staff raised questions regarding MID's Public Health and Waste Management testimony. These matters were resolved at the hearing and the objections withdrawn or denied. (9/12 RT, p. 94, line 14 through p. 96, line 17; and p. 103, line 21 through p. 104, line 7)

operated as a peaking project, would not have a substantial impact on energy resources. (9/2 RT, p. 54, lines 2-10.)

The SPPE Application for the MEGS project is based upon 8760 hours of operation per year. This is specified in several locations within the SPPE Application. Specifically, Table 2-2 on Page 2-3 of Section 2.0, Project Description of the SPPE provides the expected performance of the project and lists the operating hours as "up to 8760".

The concept of a peaking plant being permitted for a number of hours which is more reflective of a baseload plant is not new. The Henrietta Peaker Project (01-AFC-18), licensed by the Commission in March 2002, was approved for operating up to 8,000 hours a year. The Tracy Peaker Project (01-AFC-16), licensed by the Commission in July 2002, was also approved for operating up to 8,000 hours a year. Both of these projects consist of two gas turbines per project, operating in a simple-cycle configuration. The Henrietta Project utilizes the same type of GE LM6000 SPRINT gas turbines as the MEGS project.

In addition, several of the peaker projects permitted under the Commission's 21 day Emergency Peaker permitting process were approved for full-time operations. These projects include the CalPeak Escondido Project and the CalPeak Borders Project (01-EP-10 and 01-EP-14). Both of these simple-cycle peaker projects were approved by the Commission to operate up to 8760 hours per year. As the Tracy, Henrietta, and two CalPeak projects illustrate, peaker projects have been permitted to operate at or near 8760 hours a year. The operating hours provide the project owner flexibility, ensuring that the plant will be able to operate when the demand for the power exists.

1. Permitting the MEGS Project for 8760 Hours Per Year Provides MID the Flexibility It Needs as a Municipal Utility

MID believes that the interests of MID's customers and the interests of the public at-large are best served by maximizing the operational flexibility of power plants to the greatest extent possible, consistent with the joint goals of maximizing economic efficiency and minimizing environmental impacts. With respect to simple-cycle facilities, such as MEGS, a natural equilibrium exists between these two goals which greatly diminishes the need for externally-imposed operational constraints.

In September 2002, the MID Board of Directors, in furtherance of MID's energy resources plan calling for 100 MW of internal peaking generation, approved the development of a simple cycle power plant. (Attachment A to this Brief.) As part of that approval, the Board

directed MID staff to permit the plant to operate up to 8760 hours a year. As specified in the testimony of Mike Kreamer, Manager of Long-Term Planning and Development for the Modesto Irrigation District, one reason for the need for optimal flexibility stemmed from MID's experience with its McClure Peaking Plant. This plant has an operational limitation of 877 hours per year (9/2 RT, p. 147, lines 17-20). This limit severely restricts MID's ability to operate the plant when needed.[6]

On January 11, 2001, pursuant to section 202(c) of the Federal Power Act, the Secretary of Energy found an emergency existed in California by reason of the shortage of electric energy, and issued an order requiring entities to make arrangements to generate, deliver, interchange and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator. MID operated its McClure plant up to 91% of its 877 permitted hours and would have run more had it not been constrained.

Another reason MID is seeking the flexibility of operating the plant up to 8760 hours per year is because MID is a major participant in the California-Oregon Transmission Project ("COTP") a 500 kiloVolt transmission facility financed and constructed by the Transmission Agency of Northern California, a public entity organized under the provisions relating to the joint exercise of powers contained in Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Joint Powers act"). Federal Law 98360 overcame the prohibition law PL 88-552 and authorized the construction of the COTP.

The COTP is one component of a group of high-voltage alternating- and direct-current transmission lines, collectively the ("Pacific Intertie"), that interconnect California with the Pacific Northwest ("PNW"). One of the primary purposes of the Pacific Intertie is to minimize the environmental impact of power plant construction by taking advantage of regional load diversity.

The utilities in the Pacific Northwest have their peak loads in the winter, while California's peak loads occur during the summer months. The diversity provided by the Pacific Intertie permits California utilities to secure summer energy from otherwise under-loaded PNW generating capacity and return that energy to the PNW during the winter months. Such arrangements have historically been known as regional, seasonal, or environmental exchanges.

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[6] For example, during the 200-2001 energy crisis, MID was forced to stop running McClure despite the benefit it could have provided to the state. (9/12 RT, p. 147, line 17 through p. 148, line 2)

MID's investment in the COTP was largely influenced by the virtues of such exchanges and MID's desire to secure maximum operational flexibility is largely driven by the same considerations. In order to realize the full benefits of interregional load diversity and make efficient use of existing transmission facilities, MEGS must be capable of serving California load both directly and indirectly via regional exchanges.

Applicant witness Gary Rubenstein in his testimony on Air Quality mentioned several reasons why, from an air quality perspective, MID is seeking to permit the plant for 8760 hours of operation per year. First of all, the San Joaquin Joint Unified Air Pollution Control District makes its determination on the amount of offsets required by a project based on the project's maximum emissions during a calendar quarter (9/2 RT, p 281, lines 8-14). Although MID experiences a summer peak in electrical load due to high temperatures and agricultural operations, its peak may not always coincide with the months of the third calendar quarter. Additional power may be needed in the second or fourth quarters should fluctuations in the summer season occur. In addition, electrical output from MEGS may be needed if other power plants owned and operated by MID are shut down for an extended outage (9/2 RT, p. 282). As an electrical utility, MID must be prepared to supply capacity and energy at any time and thus must maintain maximum flexibility to meet its obligation to serve its customers.

2. MID Performed an Evaluation on Developing a Simple-Cycle Project Versus a Combined cycle Project – a Simple-cycle Project Better Serves its Needs

As part of its resource planning efforts, MID determined a need for peaking capability within its internal electrical generation system. A peaker plant (two gas turbines in a simple-cycle configuration) would help MID with its seasonal load fluctuations (MID's load in the winter is roughly half of what it is in the summer). In addition, a peaker would provide MID with load following capability and electrical power which could be accessed quickly[7]. A peaker plant could also provide temporary baseload power should it be needed during MID's summer peak, or if one of its baseload units was experiencing a planned or unplanned outage. It could also provide temporary baseload power if there was a transmission system constraint.

Another benefit of a peaker plant is that the installed cost on per megawatt basis is less than a combined cycle project. However, an economic evaluation using Henwood Energy's production cost model ProSym software was performed to evaluate the costs of a combined-cycle plant versus a simple-cycle peaking plant over a 20 year period. The analysis showed that

the net present value of the combined fixed and variable costs of the simple-cycle facility over a twenty year period to be nominally less than the net present value of the combined-cycle design (9/2 RT, p. 149, lines 5-10).

The MID Board of Directors also chose to develop its own peaking plant rather than purchase the generation because during times of high market volatility, MID's analysis clearly showed it was better to own the generation rather than purchase the power on the market.

Ultimately, the MID Board of Directors chose to develop a simple-cycle peaking plant because it better met MID's existing and future electrical generation needs.

On a regular basis, MID reviews its Long-term Resource Plan to ensure adequate base, intermediate, and peaking resources. If MID begins to operate its peaking resources in a prolonged base load operation, this mode of operation will show up as a requirement in the resource plan for additional peaking capacity. This will spawn a review of MID's base load and peaking resource needs, which will include a review of the current unit efficiencies. If additional, more efficient base load resources are indicated, then MID will recommend that these resources are secured, and less efficient peaking units are relegated to the peaking mode of operation.

3. CEQA Analysis Regarding Energy Resources Demonstrates MEGS Will Not Result in an Inefficient and Unnecessary Consumption of Energy

As part of its CEQA analysis of the MEGS project, the Staff is required to "…describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy (Title 14, Cal. Code Regs. Section 15126.4, subd.(a)(1).) Potential significant impacts to Energy Resources under CEQA include:

- The project's energy requirements and its energy use efficiencies;
- The effects of the project on local and regional energy supplies and on requirements for additional capacity;
- The degree to which the project complies with existing energy standards; and
- The effects of the project on energy resources.

(Title 14, Cal. Code Regs. Section 15000 et seq., Appendix F – Energy Conservation.)

Each of these items, as they relate to the MEGS project, is discussed in more detail below. Also included is a summary of the Staff's Energy Resources analyses for the Henrietta

[7] For example, MID's Woodland Generation Station 2 (1-SPPE-01) can generate 83 MW in approximately 2 hours. A peaker plant such as MEGS, would be able to provide 95 MW in approximately 15 minutes.

Peaker Project and the Tracy Peaker Project and a comparison of these analyses to the MEGS project.

a. The Project's Energy Requirements and its Energy Use Efficiencies

In the Staff's analysis in the Final Initial Study for the MEGS project, the Staff determined that "under expected project conditions, electricity will be generated at a full load efficiency of approximately 39.6 percent Lower Heating Value (LHV) with the combustion turbines operating at full load" (Exhibit 22, p. 6-2.) This is comparable to the efficiency of the Henrietta Peaking Project (HPP). The Staff stated that the efficiency for the Henrietta project would be 39.2 percent LHV. (HPP Final Staff Assessment pp.4.3-2.)

The similarities of the Henrietta project and the MEGS project are striking. Both projects use two GE LM6000 SPRINT gas turbines, operating in a simple-cycle configuration. In addition, both projects were proposed to operate nearly the same number of hours per year (Henrietta up to 8,000 hours per year, MEGS up to 8760 hours per year), and the efficiencies for both plants are virtually the same (Henrietta 39.2% and MEGS 39.6%). The Staff 's energy resources analysis for the Henrietta project determined that even with operations up to 8,000 hours a year, the Henrietta project, "while it will consume substantial amounts of energy, it will do so in the most efficient manner possible" (HPP FSA, p. 4.3-6).

The Staff Analysis for the Tracy Peaker Project (TPP) is also worth mentioning. The Tracy Peaker Project uses two GE 7EA frame gas turbines. This project was also licensed to operate up to 8,000 hours a year. The Staff energy resources analysis states that "under expected project conditions, electricity would be generated at a full load efficiency of 32.5 percent LHV." (TPP Final Staff Assessment, p. 6.2-2.) The Staff further states that "the project's fuel efficiency does not compare favorably to other possible peaking technologies." (Id.) Yet, under the deregulated electricity and natural gas markets, the Staff concluded that the cost of running the project would determine whether or not it would be dispatched and thus, consume natural gas. The Tracy plant would not be dispatched if other, more efficient plants were available to operate (Id., pp. 6.2-5, 6.)

MID in determining how it will meet its daily load requirements, also bases its decision on economics. MID schedules its electric resources two ways: 1) on a "preschedule" bases (a day or two ahead of time), and 2) on a "real-time" basis. When creating its preschedule, MID first uses electric resources through its long-term power purchase agreements. It then schedules the operation of its existing baseload plants such as its Don Pedro Hydroelectric facility, and its

Woodland Generation Station 1 and 2 plants. The MEGS project would be dispatched, next if its power were still needed. It would also operate if one of MID's other facilities were experiencing an outage, or if it were experiencing a transmission constraint.

MID modifies its prescheduled resources on a real-time basis if its load projections are lower or higher than what was anticipated. The dispatching of its resources on a real-time basis is based upon the efficiencies of its resources.

b. The Effects of the Project on Local and Regional Energy Supplies and on Requirements for Additional Capacity

Staff's FIS and Errata for MEGS both state that the MEGS project would not result in an impact to natural gas supplies. In addition, CEC Staff witness Shahab Khoshmashrab testified that even if the project were to operate 8760 hour per year, "its still going to be insignificant, because the vast reserves of natural gas."(9/2 RT, pp 129.) The Staff reached the same conclusion for the Henrietta and Tracy Peaker projects.

c. The Degree to Which the Project Complies with Existing Energy Standards

There are no energy standards that apply to the MEGS projects or other non-cogeneration projects, including the Henrietta, or Tracy Peaker Projects.

d. The Effects of the Project on Energy Resources

Staff concluded that the MEGS project would not create a significant adverse impact on energy resources. However, questions were raised whether Staff's analysis of MEGS' operation was sufficient to support this conclusion for MEGS continuously operating at 8760 hours per year.

The Staff energy resources analyses for the Henrietta and Tracy Peaker Projects evaluated these peaker projects proposed by the applicants. Both projects were proposed and permitted to operate up to 8,000 hours a year. The Staff found, and the Commission agreed, that the projects would not result in an inefficient and unnecessary consumption of energy. Specifically for the Henrietta project, the Staff made the following determination:

> In conclusion, the project configuration (two simple cycle units in parallel) and generating equipment (LM6000 Sprint gas turbines) chosen appear to represent the most efficient feasible combination to satisfy the project objectives. There are no alternatives that could significantly reduce energy consumption."(HPP FSA, p 4.3-5.)

Given the similarities between the MEGS and Henrietta projects, the same conclusion should be applicable to the MEGS project.

For the Tracy Peaker Project the Staff concluded:

> [T]he project configuration chosen (two simple cycle units in parallel) appears to represent an effective means of satisfying the project objectives. The machines chosen [GE 7(EA)] exhibit fuel efficiency from seven to 21 percentage points worse than feasible alternative machines. While [the project applicant] proposes to operate the TPP at an annual capacity factor of 50 percent or more, a high number for a peaking plant, market economics in the form of electricity and natural gas prices would control TPP's dispatch and, thus, its capacity factor. While operation of the TPP represents an adverse impact on energy resources, Energy Commission staff believes it does not constitute a significant impact because:
> The project's maximum fuel consumption, 21.4 billion BTU per day, is not a significant portion of natural gas supply to California; and
> Both the electricity market and the natural gas market are deregulated. If the TPP were too inefficient, other more efficient competitors would displace it, and it would not be dispatched.
>
> Staff, therefore, believes the TPP would not constitute a significant adverse impact on energy resources. (TPP, FSA, p. 6.2-6)

The heat rate for the MEGS project on a higher heating value (HHV) is expected to be 9,478 BTU/kWh. The Tracy Peaker Project, in comparison, has an approximate net plant heat rate on a higher heating value (HHV) basis of 11,750 BTU/kWh. The heat rate for the Henrietta plant on a higher heating value (HHV) is approximately 9,577 BTU/kWh.

In neither the Henrietta project nor the Tracy project was the conclusion drawn that projects operating up to 8,000 hours a year in a simple-cycle configuration, as compared to combined cycle, would result in an inefficient or unnecessary consumption of energy. The MEGS project should be treated no differently.

4. MID Proposes to Report Annually on its Operating Hours

MID is seeking approval to operate the MEGS project for up to 8760 hours of operation per year. The purpose of this is to provide MID the flexibility it needs to provide electricity to its customers. The MID Board of Directors does not want any barriers such as operating limits to prevent it from serving its customers. To address the Committee's concern regarding annual efficiency of permitting MEGS for up to 8760 hours per year, MID proposes that as part of its Annual Compliance Report to the Commission and the City of Ripon, it report on its actual hours of operation for each previous year. Furthermore, after two consecutive years of operating in excess of 8000 hours per year, MID will evaluate the MEGS simple-cycle configuration in conjunction with other MID resource alternatives. Should the resource alternatives evaluation be required, a summary of the evaluation will be included in the next Annual Compliance Report.

To this end, MID proposes the following condition language consistent with Mike Kreamer's testimony (9/2 RT, p.151, lines 16-23):

ENERGY RESOURCES -1: Following the first full year of operation and in each subsequent year thereafter, the project owner shall provide a summary of the project's actual operating hours for the previous year. If for two consecutive years the project operates in excess of 8000 hours per year, the project owner will evaluate the project simple-cycle configuration in conjunction with other MID resource alternatives.

Verification: The project owner shall include the operations summary in the Annual Compliance Report for the life of the project. Furthermore, should the resource alternatives evaluation be required, a summary of the evaluation will be included in the next Annual Compliance Report.

C. Alternatives

MID identified and evaluated a range of reasonable alternatives to the proposed project, including a no project alternative. MID reviewed alternative site locations, project configurations and technologies. (Exhibit 1, section 9) The no-project alternative would not have achieved the project objective of obtaining approximately 100 megawatts of internal generation. Alternative sites were reviewed based on site availability, size and land use, proximity to transmission, fuel, and water and wastewater sources, and compatibility with the project traffic, noise and visual setting.

The proposed site was preferred for a number of reasons. Its size and shape were adequate to contain the proposed simple cycle plant facilities as well as potential reconfiguration to combined cycle. (9/2 RT, p. 113, lines 1-10) It was also in close proximity to existing MID substation and transmission facilities, as well as to good gas and water supplies. (9/2 RT, p. 106, lines 10-16) The site is zoned industrial and is adjacent to currently operating industrial activities. Thus, the proposed plant is compatible with local land use plans and zoning ordinances as well as existing land uses. The potential environmental impacts at the proposed site were equal to or less than those presented by the other reviewed sites. (Exhibit 1, Table 9.2-2)

MID also reviewed alternative technologies. Technologies were measured based on their commercial availability, technical feasibility, and cost-effective operation. Technologies other than the simple cycle gas turbines chosen, that potentially met all three criteria, had greater environmental impacts. (Exhibit 1, § 9.6.3) A conventional combined cycle configuration was rejected because it did not provide the operational flexibility MID required of the new plant. (Exhibit 1, § 9.6.2.3; 9/2 RT, p. 108, line 13 through p. 109, line 7)

Intervenor Sarvey suggested that SCONOX technology would be technologically feasible and environmentally preferable to the proposed project. (9/2 RT, pp. 357-359) Mr. Swaney of the Air District, however, testified that he did not disagree with the assessment that SCONOX was not technologically feasible for this project. Mr. Swaney stated that instead of making this finding, the Air District instead found during its best available control technology evaluation for MEGS that SCONOX is not cost effective. Based on this finding SCONOX is not required for this project. (9/2 RT, p. 379, lines 4-24)

MID has performed a reasonable and sufficient review of potential alternatives to the proposed project. No alternatives have been proposed that will meet the project objectives of providing a flexible, load following peaker plant with less potential environmental impact.

D. Visual

The MEGS project is proposed to be located in an industrial area with relatively low quality views. There are relatively few sensitive receptors that would have views of the proposed plant. Existing large structures in the vicinity of the plant will partially obstruct views of the plant, and landscaping and development that is planned to occur in the vicinity of the plant will further screen views of the plant. Furthermore, the project includes several measures designed to mitigate its potential aesthetic impact. These measures include neutral, low contrast colored finishes for the new facilities, shielded and directed lighting, and specified landscaping. With the mitigation measures incorporated as part of the project, Commission Staff and MID agree that there is no unmitigated potential aesthetic impact from the project. (9/2 RT, p. 167, lines 3-13; p. 195, lines 9-16)

In reviewing the potential visual, or aesthetic, impacts of a project, CEQA lists four questions that must be addressed to determine whether a project's visual effects are significant. (Title 14, Cal. Code Regs., Appendix G, Section I; 9/2 RT, p. 165, line 4 through p. 167, line 13) Commission Staff and MID agree that there will be no significant visual impact under any of the four criteria. (9/2 RT, p. 165, line 11 through p. 167, line 2) The overall landscape character of the affected environment is expected to remain essentially unchanged. (Exhibit 25, p. 93)

The proposed visual mitigation measures are incorporated into the description of the project. They are activities MID has agreed to undertake. (9/2 RT, p. 167, lines 3-13). In addition, Ripon is to oversee MID's incorporation of such measures into the project as part of the City's site plan review permitting process. Ripon has concurred with the mitigation measures and

will enforce them through its Major Site Review Program which is discussed in more detail below. (9/2 RT, p. 189, line 18 through p. 191, line 17; Attachment C to this Brief)

E. Noise

Environmental noise impacts of a proposed project will be measured to ensure compliance with local ordinances and general plan requirements. They will also be measured to determine whether the project will produce any excessive noises or substantial increases in ambient noise levels. (Title 14, Cal. Code Regs., Appendix G, Section XI) MEGS has been reviewed against each of these criteria and it has been determined that the project will not result in any unmitigated noise impacts on the environment. MEGS is located in an industrial area with very high existing ambient noise levels. The ambient noise in this area is high even during the quietest hours of the day. (Exhibit 6, NOISE: Table 4 Revised) Any increases to this noise from the project construction and operation will be barely perceptible. Staff and Applicant agree that the noise produced by the plant and the increase that noise causes to the ambient noise levels in the vicinity of the plant are not substantial. (9/2 RT, p. 202, lines 6-22; p. 240, lies 1-12).

The testimony of MID and Staff concur that the project as proposed does not result in a significant noise impact under the California Environmental Quality Act (CEQA). MID's testimony demonstrates that the predicted noise levels from MEGS of between 55 and 57 dBA will not cause a substantial increase in the noise level at the closest sensitive receptors. (Exhibit 25, p. 70; 9/2 RT, p. 202 lines 6 through 10) Staff's testimony also asserts that predicted plant noise levels do not constitute a significant noise impact. (9/2 RT, p. 235, lines 4 through 20; Exhibit 22, pp. 11-10 through 11-12; Exhibit 26, pp. 4) In fact, measurements conducted by the Staff show that the potential increase in noise at Location R is only 4 dBA, an increase which Staff considers insignificant. (Exhibit 26, NOISE Table 4 Revised, p. 3)

The testimony of MID and Staff also agree that the project as proposed complies with all applicable LORS, namely the City of Ripon's 65 L_{dn} guideline for residential land uses. (Exhibit 1, pp. 8.5-3 through 8.5-6, p. 8.5-9; Exhibit 25, p. 69; 9/2 RT, p. 200 lines 14 – 18, p. 202 lines 11 through 14; Exhibit 22, p. 11-9; 9/2 RT, p. 234 lines 9 through 17) The City of Ripon also concurs that the project complies with their noise standards (Exhibit 1, Appendix 8.5A)

The project as proposed includes several design measures to reduce noise to an acceptable level. These include combustion turbine air inlet silencers, combustion turbine acoustical enclosures, combustion stack silencers and barrier walls around the fuel gas compressors. (Exhibit 1, p. 8.5-14) The remaining project noise will become a component of the

overall noise level, blended with the existing industrial noise sources which will tend to mask the plant noise, making the plant noise less distinguishable (9/2 RT, p. 217 line 22 through p. 218 line 18). This is particularly true at Location R, where according to measurements conducted by Staff the projected change in noise level is only 4 dBA and the difference between the existing level (54 dBA) and the predicted project level (55 dBA) is 1 dBA. (Exhibit 26, NOISE Table 4 Revised, pp. 3). Staff's measurement results of 54 dBA confirm Applicant's assumptions that the noise level at Location R was conservative relative to Location A (Exhibit 1, Tables 8.5-9 through 8.5-11, p. 8.5-10), and as Staff stated, the measurements "buttressed the conclusion" (9/2 RT, p. 240 line 11 through 12) of no significant impact.

Applicant requested standard language be added to Proposed Condition of Exemption NOISE-1 that allows an alternate method of determining compliance. This was requested to ensure that the plant noise level can be accurately isolated from the other nearby industrial noise sources; thereby, making the plant responsible for the noise it creates (9/2 RT, p. 203 lines 10 through 20). Staff accepted this addition, and incorporated the standard language into the Condition of Exemption as part of Staff's Errata. (Exhibit 26)

The owners of residences approximately 1000 feet from the center of the plant continue to express strong concerns regarding the potential for the plant to generate noises that may disturb them at their homes. They mention the annoyance of high tonal sounds, loud continuous humming sounds, and overall increase to the already intrusive noise levels they experience at their homes. As detailed earlier in this brief, while the concerns of these residents may be deeply seated in past experience and in the already existing levels of intrusive noise in the vicinity of their homes, such fears, however eloquently voiced, do not constitute "substantial evidence" of any impact resulting from the project. (See Section IV above) To the contrary, the expert testimony presented herein shows that no tonal noises will be permitted to emanate from the plant. Continuous sounds will not, even from conservative measures, be substantial. In fact such sounds will likely be barely perceptible if they exist at all. To ensure that the design criteria and mitigation measures are complied with and are effective to keep the project noise insubstantial, testing will be conducted and reports submitted to the Commission at plant start up. Thereafter, noncompliance and other concerns will be presented to Ripon as part of a noise complaint process the City has agreed to undertake as part of its Major Site Plan Review process. (9/2 RT, p. 44, lines 14-19; Attachment C to this Brief)

As part of its Site Plan responsibility, Ripon has agreed to monitor and actively ensure Applicant's resolution of all noise complaints using the Commission's standard Noise Complaint Form. The residents voiced significant concerns over the adequacy of the City of Ripon's ordinances and procedures to provide oversight for the MEGS noise mitigation compliance. They indicated that prior reliance on the City of Ripon for noise abatement has not been effective. The City was unable to take action on the previous complaints noted by Ms. Kaefer because of the City's lack of a specific noise ordinance. The noise sources noted in such previous complaints are not permitted under the City's Site Plan Review process in that these uses pre-dated adoption of that process. Thus these situations are distinct from the MEGS project. The MEGS project will be permitted under Ripon's Site Plan Review process and the City will have the authority and ability to enforce the permit conditions. (9/2 RT, p. 248, line 5 through p. 249, line 9)

F. Air Quality

1. The MEGS Project Will Comply with the Applicable Federal, State, and Local Laws, Ordinances, Regulations, and Standards, and with Mitigation, Does Not Result in Any Significant Air Quality Impacts.

Substantial evidence in this record demonstrates that the MEGS project is safe, and will meet all applicable air quality standards. This is true under all operating conditions, under all meteorological conditions and at all locations, based on conservative assumptions regarding background or existing air quality, operating levels, emission rates and meteorology. (9/2 RT 270). In addition, the record supports the conclusion that there are no significant, unmitigated air quality impacts associated with the MEGS project if the conditions proposed by MID are adopted. (9/2 RT 278).

2. The MEGS Project Will Have No Significant Impacts to Local Air Quality.

With respect to local air quality effects, the MEGS project addressed those issues with three different types of analyses: (1) pollution control technologies, (2) air quality impacts analysis, and (3) preparation of a health risk assessment. (9/2 RT 269).

3. MEGS Will Meet or Exceed the SJVUAPCD's BACT Requirements.

To address local air quality impacts, the MEGS project analyzed the appropriate pollution control technology and the "best available control technology" ("BACT"). (9/2 RT 268-269; Exhibit 1, Appendix 8.1G). BACT is the fundamental cornerstone of any licensing process, requiring that new facilities have to use the cleanest technologies available. By ensuring that

projects use the cleanest technologies, potential impacts on local air quality are minimized. (9/2 RT 269).

In this case, the San Joaquin Valley Unified Air Pollution Control District's ("SJVUAPD" or "Air District") Authority to Construct will confirm that the MEGS Project complies with BACT. (9/2 RT 268). The California Energy Commission (CEC or Commission) Staff, in the Final Initial Study, has not disputed this conclusion.

With respect to carbon monoxide ("CO"), although the MEGS Project is not subject to BACT, the project will use an oxidation catalyst. (Exhibit 1, p. 8.1-20. The SJVUAPCD is expected to that CO emissions be limited to 6.0 ppmvd @ 15% O_2, averaged over three hours, comparable to BACT for other, similar facilities. (Exhibit 22, p. 3-21). In simplest terms, the CO requirements in the permit are so stringent that the carbon monoxide concentrations inside the stack will be at or below the ambient air quality standard for carbon monoxide that is the level that is safe to breathe in ambient air.

Nitrogen oxides (NO_x) will be controlled as well through a combination of two technologies. One is the use of water injection. The second is a system called selective catalytic reduction (SCR), a system that the Commission has reviewed many times before and found to be safe and effective. (Exhibit 1, p. 8.1-20; 9/2 RT 268) Each combustion gas turbine is designed to meet a NO_x emission concentration limit of 2.5 ppmvd NO_x @ 15% O_2, averaged over three hours, during all operating modes except gas turbine start-ups and shutdowns. (Exhibit 1, p. 8.1-24). This meets the current Air District BACT determination for NOx for simple cycle gas turbines such as those proposed for use at MEGS. (Exhibit 1, Appendix 8.1G).

Reactive organic gases (ROGs) will also be controlled through the use of good combustion practices (Exhibit 1, p. 8.1-45). The Air District is expected to determine that BACT for VOC is an emission limit of 2.0 ppmvd @ 15% O_2, averaged over three hours. (Exhibit 1, p. 8.1-45).

Emissions of sulfur dioxide (SO_2) and particulate matter (PM_{10}) will be controlled through the use of natural gas as a fuel. MEGS will use exclusively PUC-regulated natural gas, which satisfies the BACT requirement for SO_2. (Exhibit 1, p. 8.1-45). Similarly, particulate matter (PM_{10}) emissions will be controlled through the use of clean burning natural gas for the combustion turbines, which will result in minimal PM_{10} emissions and minimal formation of secondary PM_{10}. (Exhibit 1, p. 8.1-45).

4. MEGS's Air Quality Impact Analysis Confirms That There Will Be No Significant Local Air Quality Effects.

The MEGS Project has performed a thorough air quality impact analysis using dispersion models required by the United State Environmental Protection Agency ("USEPA") and the SJVUAPCD and a number of worst-case assumptions. (Exhibit 1, pp. 8.1-29 to 8.1-39; 9/2 RT 269). Specifically, the analysis assumes worst-case operating scenarios, worst-case emissions, and worst-case weather conditions at the project site. (9/2 RT 269). The analysis makes these combined worst-case assumptions even if those conditions physically cannot occur at the same time.[8] (9/2 RT 269).

The air quality impact analysis shows the location and levels of the greatest air quality impact. By definition, all other locations would have lesser levels of air quality impacts.

The purpose of all of these conservative assumptions is to make sure that the MEGS Project will not cause any violations of any state or air quality standards at any location at any time under any weather conditions and under any operating conditions. (9/2 RT 269-271). The air quality impacts analysis confirms that this is the case for the MEGS Project. (*ibid.*; Exhibit 1, p. 8.1-37; Exhibit 22, p. 3-37).

5. The Health Risk Assessment Performed for the MEGS Project Confirms that there are No Adverse Local Air Quality Impacts.

The MEGS Project Health Risk Assessment (HRA) confirms that there will be no significant adverse local air quality impacts associated with the MEGS Project. The results of the HRA show that the health risk is not significant at any location, at any time, under any operating conditions. (9/2 RT 269-270). The public health impacts associated with the project are not in dispute with CEC Staff.

6. The MEGS Project Will Have No Significant Impacts on Regional Air Quality.

The MEGS project will have no significant impacts on regional air quality. This finding of no significant impact is confirmed by the three components to the regional air quality studies performed by the MEGS project: (1) the use of best available control technology; (2) cumulative impacts analyses regarding regional air quality; and (3) emission offset requirements. (9/2 RT 270).

[8] For example, the worst-case of emissions from a power plant might occur during winter conditions when the ambient temperatures are lowest and the mass flow through the engines are highest. The worst-case meteorological conditions for dispersion might occur in the summer. The air quality impacts analysis nonetheless assumes that those worst-case emissions aspects of the wintertime apply during the summer meteorological conditions, even though that is not physically possible.

Each of these three regional impact analyses is considered in turn below.

7. The MEGS Project Will Use Best Available Control Technology to Minimize Regional Air Quality Impacts

As discussed above, the MEGS Project will use best available control technology to minimize project emissions. Minimizing project emissions is one of the most effective techniques for minimizing regional air quality impacts. (*ibid.*)

8. The MEGS Project Will Not Cause Any Significant Unmitigated Cumulative Air Quality Impacts.

There have been two cumulative air quality impacts analyses for the MEGS project that looked at the impacts of the MEGS project and other reasonably foreseeable projects against the backdrop of existing background air quality levels. (9/2 RT 270). As with the local air quality analysis, MEGS used multiple conservative assumptions in its cumulative air quality impact analyses. The first such analysis was included in the SPPE Application. (Exhibit 1, pp. 8.1-37 to 8.1-38). For example, in this analysis, if the highest PM_{10} levels currently in this region occurred in the wintertime, and if the highest project impacts for PM_{10} were to occur in the summertime, the analysis would nonetheless assume that they occurred at the same time. Even with this level of conservatism, the MEGS Project will not cause any new violations of any state or federal air quality standards. (9/2 RT 270-271; Exhibit 1, pp. 8.1-37 to 8.1-38).

This analysis did show, not surprisingly, that the MEGS Project would contribute to existing violations of the state and federal ozone standard, and of the state and federal particulate matter (or PM_{10}) standard, that occur during some times in the region. (*ibid.*). Because of this contribution to those existing problems, air quality regulations require that the MEGS project provide the second element of the regional air quality analysis, emissions offsets, as discussed in the next section below.

A protocol for a second cumulative air quality impact analysis was included in the Application for SPPE. (Exhibit 1, Appendix 8.1H). The analysis demonstrated that the cumulative impacts of the proposed project and other new/modified sources in the project area are not expected to cause a new violation or contribute significantly to an existing violation of any state or federal air quality standard in the project area. (Exhibit 5, pp. 17, Attachment AQ-26; Exhibit 22, pp. 3-45 to 3-46).

Thus, there have been two cumulative air quality impact analyses prepared for the MEGS Project and both of these analyses reached the same conclusion: the MEGS Project will not cause any new violations of state or federal ambient air quality standards but will contribute to existing

violations of the state and federal standards for ozone and $PM_{10.}$ (9/2 RT 270-271). These potential cumulative, regional air quality impacts are addressed through the provision of emission reduction credits. (9/2 RT 271). These mitigation measures are discussed further below.

9. The MEGS Project has Identified and Will Obtain Emission Offsets to Fully Mitigate Any Potential Regional Air Quality Impact.

Emission offsets are part of a regional mitigation program designed to ensure that new plants of any type can be constructed while still making sure that progress towards cleaner air is maintained. Emission offsets are a requirement of local regulations, state law and federal law. (Exhibit 1, pp. 8.1-13 to 8.1-17; Exhibit 22, pp. 3-1 to 3-3).

MEGS will provide offsets for this project as required by the Air District. Specifically, MEGS will provide offsets for ROG, NOx and PM_{10} in the quantities required by applicable law and regulation. (9/2 RT 271; Exhibit 1, pp. 8.1-45 to 8.1-47; Exhibit 22, pp. 3-41 to 3-43). There is no dispute that MEGS will satisfy the emission offset requirements of the Air District.

10. Most Issues of Disagreement Between Applicant and Staff Have Been Resolved.

As a result of discussions between Applicant and Staff during workshops, most areas of disagreement between Applicant and Staff in the area of air quality have been resolved. The proposed conditions of exemption for air quality contained in Staff's Final Initial Study (Exhibit 22), as modified in the Staff's Final Initial Study Errata (Exhibit 26) are acceptable to Applicant with the exceptions noted below.

a. Issues Related to Construction Mitigation

Resolved Construction Mitigation Issues

Agreements have been reached between Applicant and Staff regarding proposed Conditions of Exemption AQ-C5 and AQ-C6. In addition, Applicant is in agreement with proposed Conditions of Exemption AQ-C1 and AQ-C2.

Unresolved Construction Mitigation Issues

Although Applicant can accept most of the provisions of proposed Conditions of Exemption AQ-C3 and AQ-C4, there remain substantive disagreements regarding a few provisions. While seeming to be minor, these disagreements are indicative of a lack of consistency at the Commission that Applicant finds extremely troubling. It is for this reason that Applicant continues to propose reliance upon SJVUAPCD Regulation VIII as the primary mechanism for mitigating construction dust impacts from the MEGS Project.

There are just two substantive disagreements between CEC Staff and Applicant regarding proposed Conditions of Exemption AQ-C3 and AQ-C4. (9/2 RT 272; Exhibit 25, p. 19-20). The

first of these, in paragraph AQ-C3(a), would relate the requirement to water disturbed areas at the construction site to the provisions of proposed Condition AQ-C4 which establish a dust opacity standard. MID proposes this connection between the two requirements, while the CEC Staff opposes it. The second disagreement, in paragraph AQ-C3(o)(3), would apply soot filter requirements to construction equipment rated at 100 hp or larger. MID proposes a 100 hp trigger level; the CEC Staff proposes a 50 hp trigger level. Also in paragraph AQ-C3(o)(3), there is a disagreement as to the definitions of the terms "not available" and "not practical" as those apply to certified engines and soot filter technology. MID proposes to define those terms, while the CEC Staff proposes to leave the terms undefined.

In each case, as shown further below, MID's proposals are consistent with CEC Staff positions taken in other proceedings. Although the CEC Staff argues that there are unique aspects of the MEGS Project which warrant different treatment, the fact remains that the most significant difference between the MEGS Project and those cases in which the CEC Staff had accepted the disputed language lies in the CEC Staff air quality witness for the case. That is to say, it is the personal opinions of the CEC Staff witness which vary from case to case, and not the technical issues at stake. And it is this variance which leads Applicant to propose the wholesale replacement of the CEC Staff's proposed dust mitigation conditions with those of the San Joaquin Valley Air District.

As shown in Applicant's testimony, the requirements of Regulation VIII are comparable in stringency to those proposed by the CEC Staff. (Exhibit 25, pp. 13-17). In addition, contrary to the testimony of the CEC Staff witness, the Air District adopted Regulation VIII to protect public health. (9/2 RT 377-378). The fact that the CEC Staff, which has no experience in the promulgation, implementation and enforcement of air pollution control regulations, argues so strenuously that the Air District's requirements are somehow "inadequate" suggests that what we are dealing with here is little more than a bureaucratic turf battle. And that, as well, is another reason why MID prefers the certainty and predictability of dust control regulations that are adopted, after notice and public hearing, by a regulatory body (the Air District) with responsibility for protecting air quality and public health.

Applicant understands the reluctance that the Committee might face in clearly taking sides in this turf battle. As a result, Applicant proposed two alternatives (Alternatives 2 and 3) which would preserve the Commission Staff's role in monitoring construction dust mitigation

measures. Based on the Committee's clear indication at the September 2 hearing, we will focus our comments on Alternative 3 below.

As noted above, the first area of disagreement with CEC Staff relates to proposed condition of exemption AQ-C3(a). Applicant proposes that the language of Condition AQ-C3(a) relate the need for and frequency of watering disturbed areas of the construction site to the dust opacity provisions of condition AQ-C4. (Exhibit 25, p. 19). CEC Staff objects to this provision on the basis of their assertion that the dust opacity provisions of condition AQ-C4 are not protective of public health. (9/2 RT 328-329). CEC Staff went so far as to suggest that those dust provisions could result in PM_{10} concentrations as high as 40,000 $\mu g/m^3$. (9/2 RT 332) CEC Staff made this hyperbolic assertion without any foundation, and without any supporting evidence. (9/2 RT 351). The Committee should ignore this claim and the ludicrous position that it represents.

This issue – whether the watering frequency should be related to the dust opacity provisions of AQ-C4 – was specifically litigated in the recent Cosumnes Power Plant proceeding. As the Commission noted in its final decision on that project:

> The Commission prefers a prescriptive, rather than a proscriptive, approach to these dust control conditions. Thus, a wind speed criterion, alone, is too proscriptive, particularly since just the wind speed would cause the cessation of construction activities on any given day. Since the Commission has already suggested wetting disturbed soils as dust mitigation, project owners should be allowed to continue construction activities, even to the point of having a water truck follow the graders on windy days, so long as the dust control objectives of AQ-SC4 are met. If available dust suppression methods do not control fugitive dust as required by AQ-SC4, then dust-producing construction activities must be halted.
>
> Similarly, Staff's proposed condition AQ-SC3(a) requiring wetting every four hours is a proscriptive approach meeting the Commission's dust control objectives. Therefore, the Commission adopts SMUD's version of AQ-SC(a) which ties the wetting requirements to the dust control objectives of AQ-SC4. Moreover, since AQ-SC4 contains a prohibition against construction activities which exceed the dust control objectives, neither SMUD's nor Staff's version of AQ-SC3(n) is needed. (Cosumnes Power Project, 01-AFC-19, Commission Decision, p. 13)

In the case of the Cosumnes Power Project, the CEC Staff took a position on this issue consistent with that taken in the MEGS proceeding; however, that has not been the consistent CEC Staff position. In the case of the Inland Empire Energy Center (01-AFC-17, IEEC Staff Supplemental Testimony, p. 8), the CEC Staff (as recently as July 18, 2003) agreed to the language connecting the "sufficiently wet" condition to the proscriptive dust opacity

requirements of AQ-C4. The difference between MEGS and IEEC is not substantive – the IEEC project is much larger, and the CEC Staff in both cases has argued that these projects sites are uniquely close to residences. Rather, the difference between MEGS and IEEC lies in the opinions of the CEC Staff witness called upon to render a judgment on the matter.

The next disagreement relates to the portion of condition AQ-C3(o) which requires soot filters to be evaluated for engines above a particular size if Tier I certified engines are not available; the CEC Staff proposes that this evaluation be performed for engines rated at 50 bhp or greater (Exhibit 22, p. 3-53; 9/2 RT 333-334); MID proposes that this evaluation be performed for engines rated at 100 bhp or greater. (Exhibit 25, pp. 19-20).

In making its argument, the CEC Staff asserts that the 50 bhp rating is necessary to be consistent with MID's construction impacts analysis. (9/2 RT 334) MID asserts that such consistency is illusory, in that Applicant assumed that no soot filters were used on any construction equipment, of any size, in its construction impacts analysis. (9/2 RT 275). CEC Staff has failed to support their claim of required consistency; they have not, and can not, identify any place within Applicant's construction impacts analysis in which soot filters were assumed to be used. Consequently, the Committee should reject Staff's claim that a 50 hp trigger is required for the sake of consistency, and should accept Applicant's proposed 100 hp trigger as providing additional mitigation benefits beyond those required for consistency with Applicant's analyses.

The final area of disagreement relates to the definitions of "not practical" and "not available" in proposed condition AQ-SC3(o). This issue is straightforward. MID has proposed the same language that was proposed by the Committee and adopted by the full Commission in the East Altamont proceeding when a similar disagreement arose between Applicant and Staff in that case. (Exhibit 25, p. 36). Notwithstanding the Staff's failure to object to the soot filter language adopted by the Commission in the EAEC case, the Staff is objecting to the language in this proceeding.

The language adopted by the Commission in East Altamont and proposed by MID here already represents a compromise on this question. Applicant believed in East Altamont (and continues to believe here) that the most appropriate condition would be to require either EPA certified engines or soot filters on large equipment, but not both. The language adopted in East Altamont, however, requires the use of both under specified conditions. Nonetheless, Applicant recognizes that the Commission has ruled upon this issue and accepts that ruling. In contrast,

rather than accepting the Commission's compromise ruling on this matter, Staff invites the Commission to take inconsistent positions by opposing the East Altamont language in this case. Instead, Staff seeks to require soot filters on engines as small as50 hp except where they are "not practical." Staff offers no rationale for why this key term should be left undefined in the condition of exemption nor has Staff demonstrated good cause for different soot filter requirements to this project compared with East Altamont.

Apart from the lack of justification and obvious cost, Staff's proposal is also flawed in that it asks the Commission to supercede the judgment of the EPA, the Air Resources Board and the Air District on this question. None of these specialized air quality agencies demand the imposition of soot filters as proposed by Staff. Indeed, even the compromise language from East Altamont exceeds all air agency requirements, as noted by this exchange between Applicant's air quality witness and Commissioner Boyd:

> "COMMISSIONER BOYD: Okay. That was the part that I wasn't sure I was up to speed on or not. Having just recently sat through a whole day of alternatives to diesels at the ARB I didn't remember hearing -- I heard a lot about technology and retrofitting soot filters and various vehicles. But I did not pick up much in offroad. But, realizing I don't live with this every day anymore, I just wanted to be updated. Thank you."
> (9/2 RT p. 289).

Finally, CEC Staff's position in this case is even more difficult to understand given that, in the Reply Brief filed by CEC Staff on September 3 in the case of the Inland Empire Energy Center, just two days after the MEGS hearing, the CEC Staff accepted, in full, the language from the East Altamont proceeding with a trigger level of 100 hp. (Inland Empire Energy Center, 01-AFC-17. CEC Staff Reply Brief, p. 3, September 3, 2003)

Applicant restates its request that the Committee adopt the same language adopted by the Commission in the EAEC proceeding, as presented in Applicant's testimony. (Exhibit 25, pp. 36).

It is Applicant's recent understanding that the CEC Staff has agreed to compromise language regarding Condition AQ-C3 in the case of the Turlock Irrigation District's Walnut Energy Center (02-AFC-4). In that compromise language, the CEC Staff has agreed to link the watering requirements of paragraph AQ-C3(a) to visible dust levels, and to incorporate, in substance, the provisions of AQ-C3(o) from the Commission's decision in the East Altamont case. If the CEC Staff were to propose the identical language offered in the TID proceeding for MEGS, Applicant would find that language acceptable in the event the Committee desires to proceed in the direction of retaining separate CEC requirements for construction mitigation.

b. Issues Related to Operation Mitigation

Resolved Project Operation Issues

Applicant and Staff agree on proposed condition of exemption AQ-C6, as presented in the Staff's Final Initial Study. (Exhibit 22).

Unresolved Project Operation Issues

There are no unresolved issues related to Conditions of Exemption regarding project operation.

VII. CONCLUSION

MID has a current need to develop 100 MW of internal generation. It requires flexible, peaker and load-following capability with fast start-up and ramp down response times, in order to serve its native load, and be available to provide electric services to the State and beyond, should the need occur. MID has proposed a nominal 95 MW net output simple-cycle power plant, permitted to operate 8760 hours a year in order to meet these needs. MID and Commission Staff have evaluated the proposed project to determine whether any significant unmitigated impacts would result to the environment from the proposed project. They concluded after review of each specified environmental topic area that the project as defined with the recommended Conditions of Exemption result in no significant impact. MID and Commission Staff have come to agreement on all Conditions of Exemption. The Commission, the Air District and the City of Ripon will oversee ongoing compliance with all mitigation measures. Substantial evidence exists on the record for the Commission to find that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed plant. The MEGS qualifies for, and the Commission should grant, the SPPE for this project.

Dated: October 1, 2003

Respectfully submitted,

By
Joy A. Warren
Senior Staff Attorney
Modesto Irrigation District

ATTACHMENT A

RESOLUTION NO. 2002-97
APPROVAL OF THE ELECTRIC RESOURCE PLANNING AND DEVELOPMENT PLAN TO IMPLEMENT THE BOARD POLICY ON LONG TERM RESOURCES RELATING TO NEW LOCAL GENERATION

WHEREAS, the Board of Directors of the Modesto Irrigation District has established a policy related to allocation of long-term and short-term electric resources; and

WHEREAS, in an effort to meet this policy, the Board of Directors has directed staff to develop and recommend activities to: 1) increase local generation by 100 MW; 2) preserve the McClure Generation Station at its current 120 MW level, or build 220 MW of new internal generation; 3) purchase up to 100 MW of long-term resources; 4) acquire 30 MW of renewable resources and 30 MW of demand side management, all by 2005; and

WHEREAS, the District staff has studied various power supply configurations and has determined that a 90 – 98 MW two unit LM6000PC with Sprint simple cycle power plant is the preferred alternative for increasing local generation.

BE IT RESOLVED, That the Board of Directors of the Modesto Irrigation District does hereby identify a single 90 MW two unit simple cycle power plant as the preferred alternative for new local generation, and authorize the General Manager to undertake activities necessary to develop a proposed power plant project and initiate application and review processes for California Energy Commission approval, including preliminary design and permitting and compliance with the California Environmental Quality Act; prepare a project development timeline and budget for both the preferred two unit simple cycle configuration and a Two-By-One (two gas turbines and one steam turbine) combined cycle alternative; and authorize a budget augmentation in the amount of $18,500,000.

Moved by Director Kidd, seconded by Director Hensley, that the foregoing resolution be adopted.

The following vote was had:
Ayes: Directors Billington, Hensley, Kidd, Van Groningen and Warda
Noes: Directors None
Absent: Directors None
The President declared the resolution adopted.

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I, Vickie Ehrler, Secretary of the Board of Directors of the MODESTO IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held the 9th day of July 2002.

Secretary to the Board of Directors
of the Modesto Irrigation District

MID Modesto Irrigation District Water and Power

BOARD AGENDA REPORT

Meeting Date: July 2, 2002
Item No.:
Tab No.:

Subject: Electric Resource Development Plan To Implement The Electric Resource Policy

Recommended Action:

(1) Identify a single 90 MW two unit simple cycle power plant as the preferred alternative for new local generation, and authorize the General Manager to direct activities necessary to develop a proposed power plant project and initiate application and review processes for California Energy Commission approval, including preliminary design and permitting and compliance with the California Environmental Quality Act; and authorize a budget augmentation in the amount of $18,500,000.

(2) Authorize the General Manager to direct the development of a proposed project to upgrade the McClure Generating Units to meet new emissions standards, including preliminary design and permitting, and other activities necessary to comply with environmental review processes in accordance with the California Environmental Quality Act; and authorize a budget augmentation in the amount of $3,600,000.

(3) Authorize the General Manager to direct the performance of feasibility studies to evaluate options for the acquisition of 30 MW of renewable resources, including initial design work for the potential development of 8 MW of renewable resources located within the MID service area; and authorize a budget augmentation in the amount of $250,000.

(4) Authorize the General Manager to direct the performance of feasibility studies to evaluate options for the development of 13 MW of Demand Side Management, including initial design work for automated demand reducing equipment; and authorize a budget augmentation in the amount of $250,000.

(5) Authorize the General Manager to enter preliminary negotiations with vendors for the potential purchase of a simple cycle turbine generator package.

Background and Discussion: During the past several months, staff has been working to prepare a plan to implement the Electric Resource Policy, authorized by the Board on November 26, 2001, related to new internal generation additions, preservation of the McClure Generation Station, and development of renewable resources and demand side management. The goal set forth by the Board, related to these issues, was to provide a plan to implement the following by 2005:

- Increase local generation by 100 MW,
- Recommend modifications to preserve the McClure generating capability or increase local generation by 220 MW.
- Prepare recommendation for the purchase of 100 MW of long-term power purchases.
- Review and recommend options for acquiring 30 MW each from renewable generation resources

and demand side management.

Staff has completed its review and is recommending the following:

➢ **Recommend Preferred New Power Plant Configuration**

- Two GE LM6000PC w/Sprint simple cycle gas turbines on one site. The rating of each unit will be between 45 and 49 MW net.
- The preferred site would be in the NW portion of the MID service territory.
- The total project cost is estimated at an amount not-to-exceed $60 million dollars.
- It is anticipated that the LM6000PC w/ sprint, combustion turbine package purchased by the District in the spring of this year, would be utilized in this project, however, the cost of which is not included in the estimated not-to-exceed amount
- The plant may be able to sited and built by the first quarter of 2005, barring no major delays

➢ **Recommended Plan For McClure Emissions Upgrades**

- Comply with new enhanced emissions standards set forth in Rule 4703 of the San Joaquin Regional Air Pollution Control District, and provide a plan for meeting the standards by April, 2003, as required by the Rule.
- Purchase and install: Selective Catalytic Reduction with air dilution for reduction of Nox; Carbon Monoxide (CO) Reduction Catalyst; Continuous Emissions Monitoring (CEMS); and upgrade the unit excitation and control systems
- Be operational by December 31, 2004, as currently being considered by the California Air Resources Board in its proposed rules to be implemented in accordance with Senate Bill 28X.
- Total project cost is estimated at an amount not-to-exceed $16 million dollars.

➢ **Recommended Plan For Long Term Power Purchases**

- Purchase a five year 50 MW base load product beginning in 2006, and possibly a long-term 6X16, 25 MW product beginning in 2006, for the third quarter of each year.

➢ **Recommended Plan For Renewable Resource Additions**

- Add 30 MW of Renewable Resources by 2005
- The addition of Renewable Resources should follow the Board Policy of 80% long-term and 20% short-term

- Short-term (6 MW) can be met through the purchase of tickets
- Long-term (24 MW) developed by purchasing 16 MW long-term (5 years) and developing 8 MW of renewable resources internal to the MID service territory
- Perform feasability studies to evaluate options for the development of 8 MW of renewable resources, located within the MID service terrirory, including some design work.
- Total project cost is estimated at an amount not-to-exceed $25 million dollars, which applies to the work related to the development of the 8 MW only.
- Staff proposes to purchase the remaining 24 MW of renewables, the cost of which would be included in future purchase power budgets.

➢ **Recommended Plan For Demand Side Management Alternatives**

- Develop options to reduce load an additional 13 MW by 2005, utilizing Demand Side Management techniques.
- Perform feasability studies to evaluate options for implimentation.
- Total project cost is estimated at an amount not-to-exceed $18 million dollars.

Environmental Review:

Although the recommendations set forth in this report represents staff's determination of the best operation choices for local generation, McClure emissions modifications and possible development of renewable generation resources within the MID system, the ultimate approval of a project, if any, must consider an analysis of the potential environmental impacts of the preferred alternatives when compared to a range of reasonable alternatives, as well as a "no-project" alternative. Under the Warren-Alquist Act, the CEC is the lead agency for siting of power plants such as the new 90 MW generation station that proposed here. Other agencies, including the District and the San Joaquin Regional Air Pollution Control District, will be responsible agencies. Neither the preferred alternative, nor any other alternative, can be approved until all environmental reviews have been completed.

Alternatives/Pros and Cons of Each Alternative:

New Generation:

Alternative Number 1: Do nothing and rely on the market.

Pros: Eliminates the need for capital investment in generation resources.

Cons: May require additional capital investment in intertie capability, beyond that currently planned, exposes the District to volatility in the power purchase market and advances the timing for additional

capital investment to increase import capability and future generation decisions.

Alternative Number 2: Build the project.

Pros: Provides long term hedge against market volatility and industry uncertainty, defers future investment in intertie capability, enhances MID system reliability, allows for resolution of some industry uncertainty before making the next decision on new generation.

Cons: Long term resources will exceed 80% of total load in 2005, second unit may delay the need for a larger combined cycle unit with a lower production cost.

Alternative Number 3: Build one unit in 2005 and delay the construction of the second unit for a couple of years.

Pros: Initially simplifies the permitting process versus building two units, delays decision on capital investment, allows additional time to sort through issues related to industry uncertainty.

Cons: Will not meet the goal of installing 100 MW of new local generation, increased construction costs due to mobilization and demobilization issues, may lose the opportunity to purchase second unit at current low pricing, environmental requirements may make siting a new unit more difficult. May require additional permitting effort unless delayed beyond five years.

McClure Generating Station Modifications:

Alternatives: At this time, there is no other alternative, which meets current environmental requirements and provides the same level of risk, for maintaining the McClure Generating Station, as a peaking facility.

Renewable Resources:

Alternatives: Do not authorize the funding for development of 8 MW of internal system renewable resources, and rely on long term purchases to meet the 30 MW goal.

Pros: Significant savings in capital investment. The goal can still be met through long-term purchases.

Cons: Although costly, local opportunities may not be developed.

Demand Side Management:

Alternatives: Do not authorize the funding for development of 13 MW of load reduction through addition Demand Side Management.

Pros: Significant savings in capital investment.

Cons: Further efforts to expand Demand Side Management will be limited to current programs. The policy goal can not be met by 2005.

Concurrence:

MID Modesto Irrigation District Water and Power

BOARD AGENDA REPORT

Fiscal Impact

A total increase in the 2002 O&M and Capital budgets of $22,600,000. The remainder of the funding required for the McClure modifications, New Generation project, development of Renewable Resources and Demand Side Management would be budgeted in the up-coming 2003/2004 and 2005/2006 budget processes. The amount of funding required for all of the projects in 2003/2004 is $87,400,000 and $9,000,000 in 2005/2006.

Recommendation:

(1) Identify a single 90 MW two unit simple cycle power plant as the preferred alternative for new local generation, and authorize the General Manager to direct activities necessary to develop a proposed power plant project and initiate application and review processes for California Energy Commission approval, including preliminary design and permitting and compliance with the California Environmental Quality Act; and authorize a budget augmentation in the amount of $18,500,000.

(2) Authorize the General Manager to direct the development of a proposed project to upgrade the McClure Generating Units to meet new emissions standards, including preliminary design and permitting, and other activities necessary to comply with environmental review processes in accordance with the California Environmental Quality Act; and authorize a budget augmentation in the amount of $3,600,000.

(3) Authorize the General Manager to direct the performance of feasibility studies to evaluate options for the acquisition of 30 MW of renewable resources, including initial design work for the potential development of 8 MW of renewable resources located within the MID service area; and authorize a budget augmentation in the amount of $250,000.

(4) Authorize the General Manager to direct the performance of feasibility studies to evaluate options for the development of 13 MW of Demand Side Management, including initial design work for automated demand reducing equipment; and authorize a budget augmentation in the amount of $250,000.

(5) Authorize the General Manager to enter preliminary negotiations with vendors for the potential purchase of a simple cycle turbine generator package.

Attachments:

Yes

Presenter	Asst. General Manager	General Manager	Legal Review Obtained
Mike Kreamer			

ATTACHMENT B

Chapter 16.72

SITE PLAN PERMIT REVIEW

Sections:

16.72.010 Purpose.

It is the purpose of this Chapter to provide a method for reviewing proposed uses that possess characteristics that require a special appraisal to determine if the uses have the potential to affect adversely other land uses, transportation, or facilities in the vicinity. The Review Authority may require conditions of approval necessary to eliminate or reduce to an acceptable level, any potentially adverse effects of a use. (Ord. 606, 1999)

16.72.020 Requirements for Application.

A. Applications for a site plan permit may be initiated by the property owner(s) or the property owner's authorized agent. Applications are filed with the Planning Department. A request for a site plan review must include a site plan that clearly describes the location and characteristics of the proposed use.

B. A fee, as specified by resolution of the City Council, is required with the application.

C. Before application, the applicant should request a preapplication conference with the Planning Department. (Ord. 606, 1999)

16.72.030 Review Procedures.

The Review Procedure for a site plan permit application is review by Director of Building and Planning for minor site plan permits, and Planning Commission review for major site plan permits. (Ord. 606, 1999)

16.72.040 Development Requirements.

Site plans approved under the provisions of this Chapter shall be subject to those conditions that ensure that the proposed use meets the minimum requirements of the City. Unless otherwise specified the use cannot be established until all conditions have been fulfilled. (Ord. 606, 1999)

16.72.050 Expansion of an Existing Use or Change of Use.

Existing uses subject to site plan permit review may be expanded pursuant to this Section and are considered minor site plan permits.

A. Required Conditions. In those instances involving expansion or change of use that require site plan review or use permit, the Director of Building and Planning may approve expansion or change of use that comply with the following conditions:

1. The change of use does not result in the. expansion of the building;

2. A building expansion that involves less than twenty-five (25%) percent increase in floor area covered by existing structures associated with the use, if there is an approved use permit or site plan.

3. The building or change of use, in the opinion of the Director of Building and Planning, would not have a substantial adverse effect on adjacent property;

4. The building or change of use complies with existing requirements of agencies and departments having jurisdiction or any other appropriate regulatory agency as determined by the Director of Building and Planning.

B. Conditions Not Met. If a proposed expansion does not comply with the conditions in Subsection (a), a major site plan permit will be required. (Ord. 606, 1999)

16.72.060 Time Limits of Approvals.

Unless otherwise specified, approved site plan permits shall lapse and become void eighteen (18) months after the effective date of approval if any of the following occur:

A. Standard Requirements. A standard requirement of approval has not been complied with;

B. Building Related Permits. A required building, electrical, plumbing, or a mechanical permit secured has lapsed or become void; or

C. Other Permits. A required permit secured from any other public agency has lapsed or become void. (Ord. 606, 1999)

16.72.070 Findings.

Before approving an application for a site plan permit, the review authority shall find that all of the following are true:

A. Consistency. The proposed use is consistent the goals, policies, standards, and maps of the General Plan, any applicable Master Plan, Specific Plan, and Special Purpose Plan, and any other applicable plan adopted by the City;

B. Improvements. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways;

C. Site Suitability. The site is physically suitable for the type of development and for the intensity of development;

D. Issuance Not Detrimental. Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements of adjacent properties; and

E. Compatibility. The use is compatible with adjoining land uses. (Ord. 606, 1999)

ATTACHMENT C

City of Ripon

259 N. Wilma Ave. • Ripon, California 95366
Phone 209 599-2108 • Fax 209 599-2685
E mail: jhall@cityofripon.org

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

September 30, 2003

To: California Energy Commission
Attn: Commissioner Boyd
Commissioner Pernell

From: Ernest A. Tyhurst, Director

Re: MID Electric Generation Station (MEGS) - Noise Compliants

You have asked for a written description of the City of Ripon's Site Plan Permit process, as it relates to MID's proposed Electric Generation Station ("MEGS") project. In particular, the City and MID are concerned with the process by which potential noise and other nuisance complaints might be handled.

The MEGS project is subject to the requirements of Ripon Municipal Code Chapter 16. 72, entitled Site Plan Permit Review. Major Site Plan Permits are reviewed by both the Director of Planning and Economic Development, and the Planning Commission. We would envision a process in which MID would submit a Site Plan Permit Application. The application would be subject to environmental review, the Performance Standards set forth in Chapter 16.156 (attached), and general conditions of approval under the City's "police power" as set forth in Article 11, Section 7 of the California Constitution. Given the concerns expressed by some neighbors, Staff would recommend that a mitigation measure or condition of approval be included which would provide a mechanism for resolving noise and nuisance complaints.

The proposed condition of approval, intended to mitigate such complaints, would utilize the City's Neighborhood Code Compliance Division. The Neighborhood Code Compliance Division, established in 1999 (Municipal Code Chapter 1.10), is charged with the responsibility for enforcement of the City's Municipal Code, with particular emphasis on abating nuisances in the City. The Neighborhood Code Compliance Division is composed of the Director of Planning and Economic Development, the City Engineer, the City Public Works Director, the City Attorney, the Chief of Police, the Deputy Fire Chief of the Ripon Consolidated Fire Department, and one member of the Ripon City Council.

We anticipate that the condition of approval would read as follows: "The applicant shall comply with all applicable noise standards and mitigations set forth in the Final Initial Study dated August, 2003, as well as the Performance Standards set forth in the Ripon Municipal Code. At any time during the operation of the MEGS facility, if complaints are made to the City of Ripon, City staff will complete the attached Noise Complaint Resolution Form and refer such complaints to the Neighborhood Code Compliance Division for appropriate review and action. The Neighborhood Code Compliance Division may employ the services of acoustical experts, at the sole cost and expense of the applicant, to assist the Division in determining whether the applicant is in compliance with this condition."

Should you have any questions or desire clarification of anything in this letter, please don't hesitate to contact me at 209-599-2108.

Attachments

Cc: Tom Terpstra, City Attorney

EXHIBIT 1 - NOISE COMPLAINT RESOLUTION FORM

Modesto Irrigation District Electric Generation Station, Ripon
(03-SPPE-1)

NOISE COMPLAINT LOG NUMBER _____

Complainant's name and address:

Phone number: _____

Date complaint received: _____
Time complaint received: _____

Nature of noise complaint:

Definition of problem after investigation by plant personnel:

Date complainant first contacted: _____

Initial noise levels at 3 feet from noise source _____ dBA Date: _____
Initial noise levels at complainant's property: _____ dBA Date: _____

Final noise levels at 3 feet from noise source: _____ dBA Date: _____
Final noise levels at complainant's property: _____ dBA Date: _____

Description of corrective measures taken:

Complainant's signature: _____ Date: _____

Approximate installed cost of corrective measures: $ _____
Date installation completed: _____
Date first letter sent to complainant: _____ (copy attached)
Date final letter sent to complainant: _____ (copy attached)

This information is certified to be correct:

Plant Manager's Signature: _____

(Attach additional pages and supporting documentation, as required).